

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
Caption in Compliance with D.N.J. LBR 9004-1(b)



Order Filed on June 18, 2020  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

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Immune Pharmaceuticals Inc.*

In re:

IMMUNE PHARMACEUTICALS INC.,

Debtor.

Chapter 7

Case No. 19-13273 (VFP)

(Jointly Administered)

Judge: Vincent F. Papalia

**ORDER GRANTING CERTAIN FORMER DIRECTORS AND OFFICERS OF  
IMMUNE PHARMACEUTICALS INC.'S MOTION FOR ORDER AUTHORIZING  
PAYMENT AND/OR ADVANCEMENT OF DEFENSE COSTS UNDER IMMUNE  
PHARMACEUTICAL INC.'S DIRECTORS AND OFFICERS INSURANCE POLICY**

The relief set forth on the following pages is hereby **ORDERED**.

**DATED: June 18, 2020**

**Honorable Vincent F. Papalia  
United States Bankruptcy Judge**

Debtor: In re: Immune Pharmaceuticals Inc.

Case No.: 19-13273 (VFP)

Caption of Order: **Order Granting Certain Former Directors and Officers of Immune Pharmaceuticals Inc.'s Motion for Order Authorizing Payment and/or Advancement of Defense Costs Under Immune Pharmaceutical Inc.'s Directors and Officers Insurance Policy**

THIS MATTER having been opened to the Court by Anthony Fiorino, M.D. ("Fiorino"), Daniel Kazado ("Kazado"), Daniel Teper, M.D. ("Teper"), Jeffrey Paley, M.D. ("Paley"), and John Neczesny ("Neczesny", collectively the "Former D&Os")<sup>1</sup>, certain current and former directors and officers of Immune Pharmaceuticals Inc., by a motion for entry of an order authorizing the payment and/or advancement of defense costs under Immune Pharmaceuticals Inc.'s directors and officers insurance policy (the "Motion")<sup>2</sup>; and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon consideration of the Opposition of Jeffrey A. Lester, Chapter 7 Trustee, to the Motion (the "Opposition"); and upon consideration of the Former D&Os' Reply to the Chapter 7 Trustee's Opposition (the "Reply"); and upon the record of the hearing held by the Court on the Motion on June 2, 2020 (the "Hearing"); and after due deliberation and good and sufficient cause appearing therefor, it is hereby

**ORDERED** that, for reasons stated by the Court on the record in its bench ruling at the Hearing, the Motion is granted as set forth herein; and it is further

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<sup>1</sup> Additionally, Gary H. Rabin (deceased) ("Rabin") was named as a defendant in the Discover Action (defined later herein). Rabin is also an insured under the Argonaut Policy (defined later herein), however, to date, the Estate of Gary H. Rabin (the "Rabin Estate") has not been served. It is expected that the Rabin Estate will seek similar relief if and when it is served in the Discover Action.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such term as in the Memorandum of Law submitted in support of the Motion.

Debtor: In re: Immune Pharmaceuticals Inc.

Case No.: 19-13273 (VFP)

Caption of Order: **Order Granting Certain Former Directors and Officers of Immune Pharmaceuticals Inc.'s Motion for Order Authorizing Payment and/or Advancement of Defense Costs Under Immune Pharmaceutical Inc.'s Directors and Officers Insurance Policy**

**ORDERED** that Argonaut is authorized to pay and/or advance the defense costs incurred to date by the Former D&Os as well as those defense costs which will be incurred in the future by the Former D&Os in the defense of that certain litigation pending in the United States District Court, District of New Jersey, captioned *Discover Growth Fund, LLC v. Anthony Fiorino, M.D.; Daniel Kazado; Daniel Teper, M.D.; Jeffrey Paley, M.D.; John Neczesny; The Estate of Gary H. Rabin; and John Doe 1-10 and Jane Doe 1-10*, Civil Action No. 2:20-cv-00351-CCC-MF (i.e. the Discover Action), in accordance with the terms and conditions of the Argonaut Policy, subject to an initial “soft cap” of \$500,000. This authorization is without prejudice to the Former D&Os’ right to seek a subsequent order of this Court authorizing Argonaut to advance and/or pay additional funds under the terms of the Argonaut Policy. To the extent the Former D&Os seek to increase the “soft cap” as authorized by this Order, they shall (i) seek agreement from the Chapter 7 Trustee and upon agreement file a request for approval of such agreement by the Court, or (ii) if no agreement can be reached between the Former D&Os and the Chapter 7 Trustee with respect to such an increase in the “soft cap”, file a request for authorization (a “Request”) directly from the Court, upon notice to the Chapter 7 Trustee. Any objection by the Chapter 7 Trustee shall be filed and served so as to be received within seven (7) days of the date of filing of the Request, after which the Court may either rule directly on the Request or schedule a hearing on such Request; and it is further

**ORDERED** that (a) within ten (10) days from entry of this Order, counsel to the Former D&Os shall provide the Chapter 7 Trustee with a statement of the total legal fees and expenses incurred to date with respect to the Discover Action, and (b) on or before the 10<sup>th</sup> day following

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each month shall provide the Chapter 7 Trustee with a statement of the legal fees and expenses incurred in such prior month. Counsel to the Former D&Os shall not be required to provide the Chapter 7 Trustee with copies of the invoices rendered to the Former D&Os and/or Argonaut related to such fees and expenses; and it is further

**ORDERED** that nothing contained in this Order is intended to modify or change any of the terms and conditions of the Argonaut Policy; and it is further

**ORDERED** that this Court shall retain jurisdiction with respect to all matters related to or arising from the implementation of this Order.